IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7864 of 2003

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ALIHUSSAIN ISHAKALI VORA

Versus

STATE OF GUJARAT

Appearance:

MR NK MAJMUDAR for Petitioner

MS PANCHAL, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 03/09/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order of detention passed by the District Magistrate, Baroda, against the petitioner in exercise of powers conferred upon him under section 3(2) of the Prevention of Anti-social Activities Act, 1985 (hereinafter called as PASA Act) directing the detention of the detenu as a property grabber as defined in section 2(h) of the PASA Act.

2. The grounds, as served upon the detenu and placed on record, revealed that the detenu-petitioner dealt with the property originally belonged to one Somabhai Dhulabhai and stood in revenue record in the name of Dahiben, the daughter of Somabhai Dhulabhai at Manjalpur, District Vadodara, bearing survey No.258/4. According to the allegations made, Dahiben made declaration before the competent authority about the surplus holding of the land as per law, and the surplus land was taken over by the competent officer on 2nd January 1985 and necessary entries were made in the revenue record. The petitioner Alihussein Ishakali Vora alleged to have been the power of attorney holder of original land owner joined hand with Hasanbhai Isapbhai Patel, after framing a scheme in the name of Haridham and plotting the land, sold such government land to other persons, and entered into contract with third party to sell the plots of land demarcated on the surplus land of Dahiben entrusted to the Government. After taking into consideration all these facts the impugned order came to be passed against the petitioner on the ground that the petitioner was engaged in the activity of grabbing the government land and allowing construction thereon. The documents which were relied upon were served upon the petitioner.

3. Learned Advocate Ms Subhadra G. Patel for the petitioner and Ms Panchal, learned AGP for the respondents were heard. Many contentions were raised on behalf of the petitioner and controverted by learned AGP. The contention on behalf of the petitioner that out of the copies of documents served upon the petitioner some were illegible copies affecting the right of representation of the petitioner and therefore the order is required to be quashed, requires to be decided, amongst the contentions raised.

4. Learned AGP Ms. Panchal vehemently objected to the contention raised on behalf of the petitioner that on the ground of supply of illegible copies, the order in question is required to be quashed. The learned AGP contended that such plea has not been taken by the petitioner in the petition. True it is that the petitioner has not taken this plea in the Special Civil Application and ordinarily, the ground not taken in the PASA matter may not be dealt with by the Court. This is so because unless a ground is taken by the petitioner it would be very difficult for the respondent to meet with it. However, the contention without taking a plea in the petition raised in this case is in respect of the fundamental right guaranteed to the petitioner and under

solemn jurisdiction of this Court under Article 226 of the Constitution of India, when this contention, which is apparent on record, can be dealt with by this Court, the petitioner is allowed to raise this contention though the same is not taken as a plea in the Special Civil Application and as vehemently objected by learned AGP.

5. From the copies which were served upon the petitioner, a document which is said to be "Namuna-3" and a document placed at 123 on stamp paper of Rs.20/alleged to be agreement to sell are really illegible. Learned AGP Ms. Panchal, however, tried to read these documents, but it clearly appears that in second paragraph first line, third line and some portion of fourth line are not at all readable. Likewise, on the back side of the document in paragraph 2 some portion of line no.2 is totally missing and one cannot make out as to what was written in such lines. Further, the middle portion of third line of the said paragraph is also missing. In the last paragraph, second line is also not legible. This is apparent on the face of the record of the document. In this respect it is necessary to refer to the observation made by the Supreme Court in the matter of Rajesh Gulati Vs. Govt. of NCT of Delhi and Another [(2002)7 SCC 129] in paragraphs 11 and 12, which are as under:

> "11. We are of the view that the High Court erred in accepting the respondents' submissions and rejecting the appellant's writ application. This Court has repeatedly held that the law permitting preventive detention must be meticulously followed both substantively and procedurally by the detaining authority. (See Icchu Devi Choraria V. Union of India, Vijay Narain Singh V. State of Bihar, AIR at P.1345; Hem Lall Bhandari V. State of Sikkim, AIR at p.766; and Ayya V. State of U.P., AIR at pp.364, 367.) The facts of this case show a breach of both.
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> "12. It cannot be overemphasized that the object of detention under the Act is not to punish but to prevent the commission of certain offences, Section 3(1) of the Act allows the detention of a person only if the appropriate detaining authority is satisfied that with a view to preventing such person from carrying on any of the offensive activities enumerated therein, it is necessary to detain such eprson. The satisfaction of the detaining authority is not a

> subjective one based on the detaining authority's emotions, beliefs or prejudices. There must be a real likelihood of the person being able to indulge in such activities, the inference of such likelihood being drawn from objective data."

6. In the abovesaid decision, in clear terms the Supreme Court has ruled that the preventive detention law must be strictly followed substantially as well as procedurally because object of such law is not to punish, but to prevent certain offences. This is so because the preventive law affects the movement and liberty of a person as guaranteed by the Constitution of India under Article 22(5). However the grave may be the incident, however the grave and enormous may be the crime against the detenu, so far as preventive detention is concerned, strict adherence is always expected from competent authorities and in this case the right of the detenu as guaranteed under Article 22(5) of the Constitution of India is clearly violated. The order impugned, therefore, is required to be set aside only on this ground.

7. In this view of the matter, the Special Civil Application is allowed. The order passed by the detaining authority on 22nd March 2003 against the petitioner under the PASA Act is quashed and set aside. The petitioner is directed to be set at liberty forthwith if he is not required to be detained in custody for any other purpose. Rule is made absolute with no order as to costs.

[J.R. VORA, J.]

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